REMARKS

Section 112 Rejections

In the Office Action, claims 15, 25, 29, and 32 were rejected under 35 U.S.C. § 112, ¶ 1, for failing to comply with the written description requirement. The Office Action states that "a floating payment" as set forth in claims 15, 25, 29, and 32 is new matter as the term "floating payment" is not found in the application as filed. In response, applicants have amended claims 15, 25, 29, and 32 to recited "a floating-price payment." Support for this term may be found, for example, ¶ [0016] of the application.[1] Applicants submit that the amended claims satisfy § 112, ¶ 1.

Section 101 Rejections

In the Office Action, the pending claims were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants submit, however, that the claims satisfy § 101 because the claimed processes are tied to specific machines, i.e., an electronic fund transfer computer system. *See In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008) (*en banc*) ("A claimed process is surely patent-eligible under § 101 if ... it is tied to a particular machine or apparatus..."). Moreover, because the claims recite a particular machine, they do not preempt a fundamental principal. *See id.* at 1391 ("claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed"). Therefore, the claims are patent-eligible.

The Office Action's reasoning for rejecting the claims under § 101 says that the claim does not recite the structural apparatus of the "core/central part of what the applicant invented." The analysis is flawed because the claims define the scope of the invention and it is improper for the Office to reduce the claimed invention to its purported "core" or "central part." *See* MPEP § 2106 ("The claims define the property rights provided by a patent..."); MPEP § 2141.02 ("Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole.'" (citing *W.L. Gore & Associates, Inc. v. Garlock,*

[1] The references to the paragraph numbers in the application refer to the published application, Pub. No. 2005/009139 A1.

Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984))). Here, the independent process claims recite multiple steps, and ***each*** step is performed using an electronic fund transfer computer system. Therefore, the claims are patent-eligible under ***Bilski***.

Section 103 Rejections

In the Office Action, the claims were rejected as being obvious under 35 U.S.C. § 103(a). The independent claims were rejected as being obvious based on the combination of Dine, admitted prior art, Perry, and official notice.

Focusing initially on independent claim 25, the cited prior art does not render claim 25 obvious for at least two reasons:

1. The cited prior art does not teach or suggest a contingent supply agreement that comprises a cross-default provision that specifies that a default on a different agreement (the swap agreement) by a non-party to the contingent supply agreement results in a default of the contingent supply agreement by one of the parties (the second business entity) to the contingent supply agreement, which default requires the counter-party to the contingent supply agreement (the first business entity) to terminate the contingent supply agreement.

2. The prior art does not teach or suggest a purchase agreement that permits one party (the purchaser) to terminate the purchase agreement when the counter-party (the first business entity) terminates a different agreement (the contingent supply agreement).

These points are discussed in order below.

Point 1 - The cited prior art does not disclose a contingent supply agreement that comprises a cross-default provision as set forth in claim 25

Claim 25 recites a purchase agreement between two parties: a purchaser and a first business entity. Claim 25 further recites a swap agreement between the purchaser and "a party" that is "separate from the first business entity." Claim 25 further recites a contingent supply agreement between a contingent supplier (that is, the "second business entity" in claim 25) and the first business entity. Claim 25 further recites that the contingent supply agreement comprises

a cross-default provision, whereby the contingent supplier (that is, the "second business entity" in claim 25) defaults on the contingent supply agreement when the "party" defaults on the swap agreement between the party and the purchaser. Claim 25 further recites that default of the contingent supply agreement by the contingent supplier requires the counter-party to the contingent supply agreement (that is, the first business entity) to terminate the contingent supply agreement.

The cited prior art does not teach or suggest a contingent supply agreement that comprises such a cross-default provision. The Office Action asserts that Dines discloses a contingent supply agreement and that contingent suppliers are well known. Even if these statements are true, neither Dines nor the admitted prior art disclose a contingent supply agreement with a cross-default provision that specifies that a default on a different agreement (i.e., the swap agreement) by a non-party to the contingent supply agreement (i.e., "the party" in claim 25) results in default of the contingent supply agreement by the contingent supplier. The prior art simply does not teach or suggest this feature of claim 25.

Point 2 - The prior art does not teach or suggest a purchase agreement that permits one party (the purchaser) to terminate the purchase agreement when the counter-party (the first business entity) terminates a different agreement (the contingent supply agreement)

Claim 25 recites that the purchase agreement between the purchaser and the first business entity permits the purchase to terminate the purchase agreement when the first business entity terminates a separate agreement, namely the contingent supply agreement.

The prior art does not teach or suggest such a purchase agreement. While Perry discloses an agreement (commodity swap) that can be terminated under certain conditions, the conditions under which Perry's commodity swap can be terminated do not match a termination by the counter-party on another contract. *See* Perry at ¶ [0030]. The Office Action also cites Perry's abstract, but the abstract only describes what can happen in Perry's system upon termination, not what can give rise the termination.

The Office Action also states that "[i]f the supply obligations of which the first party is responsible is not met, then obviously the purchaser will terminat[e] the contract." Office Action at 19. Regardless of whether this is true, it is irrelevant to claim 25 because in claim 25 the

supply obligations could still be met by the party (that is, the counter-party to the forward contract), yet the purchaser is still permitted to terminate the purchase agreement in claim 25.

For at least these reasons, applicants submit that claim 25 and its dependent claims are nonobvious in view of the cited references. In addition, for analogous reasons, applications submit that independent claims 15, 29, and 32, and their respective dependent claims, are nonobvious in view of the cited references.

CONCLUSION

Applicants respectfully submit that all of the claims presented in the present application are in condition for allowance. Applicants' present amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicants reserve the right to address specifically all such assertions and statements in subsequent responses. Applicants also reserve the right to seek claims of a broader or different scope in a continuation application.

Applicants do not otherwise concede the correctness of the Office Action's rejection with respect to any of the dependent claims. Accordingly, Applicants reserve the right to make additional arguments as may be necessary to distinguish further the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Applicants have made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

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